

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

LEGER  
PL1

120237

**FILE:** B-208386

**DATE:** December 28, 1982

**MATTER OF:** Silent Hoist & Crane Co., Inc.

**DIGEST:**

1. GAO will consider protester, a nonbidder, to be interested party where protester timely protested solicitation improprieties, and where if protest is successful, protester would be eligible to compete under possible resolicitation.
2. Where protester alleges that amendment's specifications for size "C" cranes are unduly restrictive of competition, contracting agency is required to make prima facie case that specifications are related to its minimum needs. However, once contracting agency has made prima facie case, protester must bear burden of affirmatively proving its case. Protester fails to carry this burden when its arguments are general in nature.

Silent Hoist and Crane Co., Inc., protests the use of Purchase Description SPCC-PD-018 in invitation for bids No. DLA700-82-B-1285, issued by the Defense Logistics Agency (DLA), Defense Construction Supply Center, for size "C" warehouse hydraulic cranes because the specifications are allegedly unduly restrictive of competition and have no reasonable relation to Government needs.

For the following reasons, we deny the protest.

Amendment No. 2 to the solicitation issued on June 24, 1982, liberalized the lifting capacity requirements of paragraph 3.8.1 of the purchase description. Silent Hoist, by letter of July 23, 1982, protested the lifting capacity requirements to this Office, alleging that the requirements were an exact duplicate of those appearing in the literature of Grove Manufacturing Company for size "C" cranes.

The contracting officer contacted Silent Hoist on August 3, 1982, and requested that the protester specify what changes were desired in the purchase description in order to allow the firm to bid. Silent Hoist indicated it was uncertain if it would request changes. This discussion was followed by a certified letter from the contracting officer that any changes be submitted within 10 days. Silent Hoist received the letter on August 9, 1982, but did not respond.

The solicitation was amended six times. At least one bidder--JLG Industries, Inc.--states that it requested changes to the purchase description so that its crane could comply, and amendments were so issued. Amendment No. 6, dated September 17, 1982, further modified the lifting capacity requirements. Bid opening occurred on October 5, 1982, and Silent Hoist did not bid. By letter of October 14, 1982, Silent Hoist requested that this Office consider its protest on the basis of its original protest letter of July 23, and the DLA report recommending denial of the protest, received on October 4, 1982. A supplemental report was received from the DLA dated November 10, 1982. A rebuttal letter from Silent Hoist, dated November 16, 1982, advised that the protester chose not to bid "since we know that it was impossible for us to enter a price which could be competitive with the basic standard item manufactured by Grove Manufacturing Company." The DLA advises that award is being withheld pending our determination.

DLA, citing Die Mesh Corporation, 58 Comp. Gen. 111 (1978), 78-2 CPD 374, questions Silent Hoist's status as an "interested party," to protest under our Bid Protest Procedures, 4 C.F.R. part 21 (1982), because Silent Hoist did not propose changes to the solicitation or submit a bid. However, Die Mesh Corporation, supra, is distinguishable because that firm not only did not compete but, unlike here, did not file a timely protest. Moreover, a protester need not necessarily submit a bid to be considered an interested party. Fred Anderson, B-196025, February 11, 1980, 80-1 CPD 120; Cardion Electronics, 58 Comp. Gen. 406 (1979), 79-1 CPD 406. Finally, a nonofferor

is an interested party to protest defects in a solicitation, where the protester, if successful, would have an opportunity to submit a bid on a possible resolicitation. Cardion Electronics, supra; see de Weaver and Associates, B-200541, January 6, 1981, 81-1 CPD 6; Roy's Rabbitry, B-196452.2, May 9, 1980, 80-1 CPD 334. Therefore, Silent Hoist is an interested party, and the failure to propose solicitation changes does not affect this status.

Generally, where a protester challenges a specification as unduly restrictive of competition, the procuring agency must establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. But once the agency establishes this support, the burden of proof is then on the protester to show that the requirements complained of are clearly unreasonable. This is so because the Government's contracting agencies primarily are responsible for determining the needs of the Government and the methods of accommodating such needs. S.A.F.E. Export Corporation, B-207655, November 16, 1982, 82-2 CPD 445.

The purchase description, as amended, was used by the contracting officer based on a survey by user activities of historical crane operations and current requirements, comparing this with various manufacturers' specifications. It was determined that the final capacities in amendment No. 6 were broad enough for a minimum of three manufacturers to offer at least one model under the IFB. Of particular significance, it was found that Silent Hoist had two models which would meet the final amendment No. 6 capacities. We consider the survey and its results as prima facie support that the purchase description is reasonably related to Government needs.

In contrast, Silent Hoist's original protest and rebuttal to the agency reports is general in nature and fails to dispute specifically the agency position that the purchase description is related to Government needs and that the protester could compete. This, plus the fact that the protester failed to avail itself of the opportunity to propose changes during the procurement convinces us that Silent Hoist has not established that the requirements are clearly unreasonable.

B-208386

4

The protest is denied.

*for* *Milton J. Arslan*  
Comptroller General  
of the United States